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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN JOSE DIVISION

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|-----------------------------------|---|--|
| 17 In re LENOVO ADWARE LITIGATION | ) | Case No. 5:15-md-02624-RMW   |
|                                   | ) |  |
| 18                                | ) | <u>CLASS ACTION</u>  |
| 19 This Document Relates To:      | ) |  |
| 20 ALL ACTIONS.                   | ) | DECLARATION OF MARK DEARMAN IN<br>SUPPORT OF PLAINTIFFS' JOINT<br>MOTION FOR THE APPOINTMENT OF<br>INTERIM CO-LEAD CLASS COUNSEL |

21  
22 Date: July 17, 2015  
Time: 9:00 a.m.  
23 Courtroom: 6 - 4th Floor  
Judge: Hon. Ronald M. Whyte  
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Pursuant to 28 U.S.C. §1746, I, MARK DEARMAN, Esq., hereby declare and state as follows:

1. I am over the age of eighteen and am fully competent to make this declaration.

2. This declaration is based upon my personal knowledge, except where expressly noted otherwise. If called upon to testify to the matters stated herein, I could and would competently do so.

3. I am a Partner at the law firm of Robbins Geller Rudman & Dowd LLP (“Robbins Geller”), counsel of record for plaintiff *Lukas Pick in Pick v. Lenovo (United States), Inc.*, No. 5:15-cv-00068 (E.D.N.C.). I respectfully submit this Declaration in Support of Plaintiffs’ Joint Motion for the Appointment of Interim Class Lead Counsel (the “Motion”). Robbins Geller moves jointly for appointment of Interim Class Counsel with Edelson PC (“Edelson”), the counsel of record in *Hunter, et al. v. Lenovo (United States), Inc.*, No. 5:15-cv-00819 (N.D. Cal.). These actions are part of the above-captioned multidistrict litigation (“MDL”).<sup>1</sup>

4. As further described in the attached firm resume and detailed in the Motion, Robbins Geller is one of the nation’s leading class action firms, having litigated many of the largest consumer, securities, antitrust, and privacy class actions since its inception. The firm has unparalleled experience in handling complex, nationwide class litigation and has consistently demonstrated its commitment and ability to endure and successfully resolve complex and cumbersome litigation in large, multimillion dollar cases such as this litigation.

5. Robbins Geller also has a proven track record of success before this Court. Some of Robbins Geller’s most recent successes in the Ninth Circuit include *Negrete v. Allianz Life Ins. Co. of N. Am.*, No. CV-05-6838 (C.D. Cal.) (achieving \$250 million in cash payments and other benefits to a class of senior citizens) and *Luther v. Countrywide Fin. Corp.*, No. 2:12-cv-05125-MRP-MAN (C.D. Cal.) (achieving a \$500 million settlement for aggrieved investors).

6. Similarly, as further described in the attached firm resume and detailed in the Motion, Edelson is recognized as a leader in plaintiffs’ class and mass actions, with a particular emphasis on consumer, privacy, and technology class actions. Edelson is routinely appointed as class counsel in

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<sup>1</sup> Robbins Geller and Edelson are collectively referred to herein as “the Firms.”

high-profile privacy class actions, and has repeatedly demonstrated the dedication and resources that have led courts and commentators to recognize Edelson for its “game-changing” privacy work and its “uncanny ability to come up with creative . . . arguments” and obtain “momentum-shifting rulings.” See Allison Grande, *Titan Of The Plaintiffs Bar: Jay Edelson*, Law 360 (Oct. 1, 2014), available at <http://www.law360.com/articles/581584/titan-of-the-plaintiffs-bar-jay-edelson>.

7. With respect to the instant cases, prior to the filing of the *Pick* Action and the *Hunter* Action, Robbins Geller and Edelson undertook an extensive investigation into the facts underlying the installation and operation of Superfish “Visual Discovery” Adware by Superfish Inc. (“Superfish”) on computers sold by Lenovo (United States), Inc. (“Lenovo”) that are currently at issue in this case. Due to their experience in handling some of the most complex litigations in the country, the Firms’ attorneys were able to quickly understand the difficulties of the case, and chart a course of action going forward. As part of the investigation, attorneys and investigators working at the direction of those attorneys gathered and reviewed thousands of pages of relevant documents from available public sources. The review included analyzing public filings from Lenovo and other entities, newspaper articles, websites, computer expert discussions, technical blogs, and other materials.

8. For instance, Edelson used network protocol analyzers to examine the web traffic from a Lenovo laptop on which the Superfish Software had been pre-installed. That revealed that the Visual Discovery Software utilized third-party Komodia’s Redirector application to intercept communications through its so-called “transparent local proxy” feature.<sup>2</sup> From there, Edelson analyzed the Windows registry and file systems on the Lenovo laptop and discovered that the Software installed a “root certificate authority certificate” in the Windows operating system, which is what ultimately enabled the interception of users’ encrypted web traffic and allowed for the injection of advertisements onto users’ computers. Edelson further tested the security vulnerabilities produced as a result of the Software’s operation, and confirmed that remote attackers would also be

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<sup>2</sup> The “local proxy” feature is essentially software installed on a user’s computer that intercepts and forwards web traffic from the subject computer to the specified server, all without the user’s knowledge or consent.

able to leverage Visual Discovery to intercept a user's encrypted web traffic – due in large part to the fact that the Komodia proxy used the same private key (and weak passphrase) for each and every Lenovo laptop on which the Superfish Software was installed.

9. Robbins Geller is also consulting with representatives of the Electronic Frontier Foundation (“EFF”) in an effort to combine expertise and share available information in order to most effectively and efficiently litigate this case. The EFF is widely regarded as the United States’ preeminent privacy and digital liberties nonprofit organization. Robbins Geller and Edelson have also hired experts in computer science and engineering to assist in the analysis of the security issues raised in this litigation.

10. Robbins Geller and Edelson have jointly and consistently worked to advance this litigation and have already made significant progress on behalf of the putative Class. To date, the Firms have:

- Coordinated many of the first conferences amongst the various plaintiffs’ firms to discuss, *inter alia*: (i) whether and where the Centralized Actions should proceed in a coordinated fashion; (ii) early preservation and discovery protocols that could be applied in each of the cases; and (iii) other methods of advancing the litigation efficiently;
- Advocated amongst the plaintiffs for staying each of the Actions pending centralization, while at the same time working with the Defendants to secure agreements on preservation, ESI and other discovery protocols, as well as early exchanges of relevant information in return for such an agreement to stay;
- Met with Defendants’ counsel to discuss and secure agreement on those issues – after other plaintiffs’ firms rejected such proposals in favor of proceeding with case management procedures in only a subset of the cases pending in the Northern District of California;
- Exchanged discovery and preservation protocols with the Defendants, as well as certain other information relevant to the Parties’ respective claims and defenses (*e.g.*, insurance policies, identities of custodians of information, the approximate number of affected consumers, the type of information disclosed, and third-parties’ roles in Defendants’ conduct); and
- Secured Defendants agreement to participate in an early mediation that would focus upon, *inter alia*, likely issues in the litigation (*e.g.*, discovery, motion practice, and the like) and the potential for an early resolution of the Centralized Actions.

11. Robbins Geller and Edelson have consistently kept the other plaintiffs' firms seeking to be appointed lead counsel informed of these efforts – including inviting them to participate in an early mediation as equals, offering to share with them the information their in-house experts had uncovered regarding the Software, and offering to share their experiences in other similar cases, which they believe will be helpful to the plaintiffs' litigation strategies in these cases. Ultimately, the other firms declined the invitation to participate in any mediation.

12. To date, Robbins Geller and Edelson have committed attorneys and paraprofessionals to the prosecution of this action and have and will continue to expend considerable resources as necessary to efficiently litigate this case through pre-trial, trial, and any appeals that may be necessary.

13. Attached hereto are true and correct copies of the following Exhibits:

Exhibit 1: Firm Resume of Robins Geller Rudman & Dowd LLP;

Exhibit 2: Firm Resume of Edelson PC;

Exhibit 3: Class Action Complaint, filed February 23, 2015, in *Hunter v. Lenovo (United States), Inc.*, No. 5:15-cv-00819 (N.D. Cal.); and

Exhibit 4: Class Action Complaint for Damages, filed February 24, 2015, in *Pick v. Lenovo (United States), Inc.*, No. 5:15-cv-00068( E.D.N.C).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 23rd day of June, 2015, at Boca Raton, Florida.



MARK DEARMAN

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2015, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 23, 2015.

s/ Carmen A. Medici  
CARMEN A. MEDICI

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## Mailing Information for a Case 5:15-md-02624-RMW In Re: Lenovo Adware Litigation

### Electronic Mail Notice List

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## Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)